

Neutral Citation Number: [2010] EWCA Crim 1408

No: 2010/0563/A8

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 28 May 2010

B e f o r e:

LORD JUSTICE PITCHFORD

MR JUSTICE BEAN

HIS HONOUR JUDGE GOLDSSTONE QC

(Sitting as a Judge of the CACD)

R E G I N A

v

ROSANNE ENGLAND

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Miss M Fawcett appeared on behalf of the **Appellant**

J U D G M E N T
(As Approved by the Court)

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1. JUDGE GOLDSTONE: This is an appeal by leave of the single judge against a sentence of 18 months' imprisonment imposed at the Winchester Crown Court on 18th January 2010 following the appellant's early plea to a single count of doing an act tending and intended to pervert the course of justice.
2. The facts giving rise to this appeal are these. Shortly before midday on 20th May last year a friend of the appellant's received a text message from the appellant asking her to go to her address. When she and the appellant's mother (who were together at the time) arrived they saw that the appellant had a long cut on one of her cheeks with blood running down her face. They asked her what had happened. She began to cry. Her mother asked if she had been raped. She started crying even harder. She did not say anything but nodded. She said that a man had knocked at the door and asked to use the telephone. She could see a car outside with a raised bonnet. The man used the telephone and then asked to use the toilet. He went upstairs, before coming down wearing a child's mask. She said that she could not remember much more apart from trying to push him off, but she was on the floor near the stairs. A more graphic, more terrifying picture could not have been painted by this appellant.
3. A short time later her father telephoned the police. A police sergeant attended and she gave the same account to that police officer. She added that the offender had not ejaculated. She then gave a description of him as a white middle-aged man with big build, bald head and stubble, about six foot two inches tall and wearing a red t-shirt. She identified the clothing that she had been wearing, a white t-shirt with damage to the front, pink knickers with damage to the front and a damaged black and pink bra.
4. Not surprisingly the police took this allegation of stranger rape very seriously and launched a major investigation, investing as they did a considerable amount of resources which might otherwise have been deployed on other matters.
5. The cul-de-sac where the appellant lived was cordoned off, house to house enquiries commenced, a police 'spotter' plane flew over the surrounding areas and searches were undertaken.
6. Later that afternoon she was taken to a sexual assault referral centre where she gave a further account and consented to a full medical examination. That evening she was interviewed as a vulnerable witness and having been reminded of the declaration of truthfulness of the contents of her statement maintained the allegation of rape.
7. A police constable conducting enquiries in the vicinity that evening identified a man by the name of Derek Cummings who matched the description given by the appellant. He gave an account of his movements. He said that he had been walking in the local forest for some hours. In view of the fact that his movements could not be corroborated, the proximity to the alleged offence and because of his apparent similarity to the description given of her attacker by the appellant, Mr Cummings was arrested and detained on suspicion of rape. That development was conveyed to the appellant through her father that evening.

8. The following morning intimate samples including pubic hair and penile swabs were taken from Mr Cummings. A police e-fit was compiled which clearly resembled Mr Cummings. He was interviewed again. His house was searched. The police spoke to his friends, neighbours and associates. Clearly they were leaving no stone unturned. He was bailed that evening pending further enquiries.
9. On 22nd and 29th May the police conducted further interviews with the appellant to clarify different aspects of her account. On 2nd June police persuaded her to assist with an artist's impression of the assailant's mask and the broken down vehicle. She had done some research into the mask on the internet. The police found contradictory forensic evidence. She said that she had last had sex with her partner six days before the alleged rape. Her partner's semen in the knickers suggested that they had not been freshly worn on the occasion of the alleged rape. Microscopic examination showed that the t-shirt and knickers had been deliberately cut with a sharp instrument before being ripped. Her story was unravelling.
10. Ten days later she was interviewed under caution by the police. She admitted that the cut to her cheek and the damage to her clothes were self-inflicted. She admitted that the entire allegation was false, but at the time that she had made the allegation she believed in her own mind that she had been raped. At the end of the interview she said that she was sorry.
11. It is worth noting precisely how much time, effort and resources were in fact invested in this matter: 24 days of time, 73 members of staff from different disciplines were diverted from other investigations, 115 exhibits were seized, 54 statements were obtained, overtime costs ran to £14,000 over and above the basic police hours cost and, most serious of all, Mr Cummings spent 28½ hours in police custody, during which time he was subject to threats and thereafter whilst on bail abused and threatened again. It was clear that Mr Cummings was an entirely innocent man of good character; the victim of an unfortunate combination of circumstances, some of which, it must be said, are down to sheer wickedness.
12. The appellant entered a basis of plea which was accepted and it is important to bear its contents in mind. Having acknowledged her plea of guilty, she said this:

"On 20th May 2009, I reported that I had been raped to the police. I was suffering from underlying psychiatric problems at the time, as outlined in the report by Dr Bray.

At the time of making the allegation, I did not know Derek Cummings and did not set out to make a malicious complaint against him. I did not name any perpetrator and nor did I give a description of any individual that I actually knew.

I am truly remorseful for the fact that Derek Cummings was arrested over this allegation. I have written a letter of apology to him.

At the time of making the complaint I convinced myself that what I was

reporting had actually happened and that I was giving as true an account as possible. However, I accept that subsequently there came a time when I completely realised and accepted that the allegation was false and that the incident did not happen. At this point I should have notified the police immediately, but I did not.

I did not notify the police that my allegation was false for approximately 36 hours and on that basis I accept that my actions amount to me being guilty of the offence as alleged."

Notwithstanding that the police did not seek to challenge the appellant's basis of plea, we for our part find it quite difficult if not impossible to accept the sixth paragraph of her basis of plea. It is apparent to us that her knowledge that her allegation was false endured for considerably more than 36 hours and to that extent her culpability was greater. But we bear in mind, as we must do, that this was the basis upon which the judge was invited to sentence and agreed to sentence.

13. When he passed sentence the learned judge identified a number of aggravating features. First, the element of advance planning. Second, the convincing complaint. Third, that as a result a totally innocent family man of good character had undergone the horror and indignity of arrest, intimate search and the taking of samples, not to mention 28½ hours in police custody. Fourth, the fact that the police investigation had led to the waste of 24 days time and the involvement of significant costs both financially and in terms of police manpower. Fifth, the impact on public confidence and jurors hearing genuine cases. Sixth, the impact on genuine rape victims.
14. By way of mitigation, the learned judge had regard to the fact that the appellant was 20 years at the time of the offence, albeit 21 when she was sentenced, and that she was of previous good character. A psychiatric report before the court set out a concerning background. There was a moving letter not only from the appellant but also from her father and Dr Bray, the author of the psychiatric reports then before the court, had concerns for her present position and her future. The sentencing judge accepted in passing sentence on the appellant that she was full of remorse and that she had lost the trust of many as well as her good character.
15. The grounds of appeal were to this effect. The learned judge had erred in finding that there was an aggravating feature of pre-planning in the appellant's case in the light of the basis of plea and the expert report which emphasised that the appellant had commenced the offence whilst in a dissociative state, apparently suffering from temporary insanity. Second, that he had erred in stating that it was difficult to come to a conclusion as to when the appellant had realised that she had made a false complaint. This was in direct contradiction to the accepted basis of plea which had stated that it was a maximum of 36 hours. As we have already indicated, we share the learned judge's concern, but if he was not going to accept the basis upon which sentence had been passed it was open to him to deal with the matter by investigating the issue further. Third, he failed to give sufficient weight to any of the psychiatric or personal mitigation raised on behalf of the appellant. Fourth, that he had failed to reflect the fact

that this was not a malicious allegation against a known individual, thus the sentence should have been distinguished from those that are.

16. Having considered those grounds and the submissions that have been made to us today by Miss Fawcett, as well as the more recent psychiatric report from Dr Hassan, we think that there is some, albeit limited, force in these grounds. Sentencing in cases such as this, which sadly are by no means uncommon, covers a wide spectrum, not, it must be said, as to the type of sentence but as to the length of sentence which save in cases where the offender is suffering from the most acute mental illness will always be one of immediate imprisonment. Sentences in such cases have varied from as little as four months to as long as three years. The longest sentences are reserved, and rightly so, for those cases where an innocent man had been maliciously targeted and it has been drawn to our attention, as we accept, that that aggravating feature is missing from this case. That does not detract however from those aggravating features which were found and rightly found to exist. Attention seeking women must be deterred from behaviour which has the potential to destroy innocent lives and which does waste police resources which are in short supply. We also remind ourselves of what was said by Burnett J in the case of Beeton [2009] 1 Cr.App.R (S) 46 at page 260, paragraph 38, and which the learned sentencing judge clearly had in mind when he spoke about the impact on public confidence and jurors hearing genuine cases:

"It is well known that the conviction rate for rape compared with the number of allegations made is low, when contrasted with many other offences. For obvious reasons, a jury is often confronted with very difficult decisions on credibility. It is extremely easy to make an allegation of rape when there is no foundation for it whatsoever. It is also inevitable that an allegation of rape will be taken extremely seriously by police forces. The cases to which we have been referred, and which I have sought to summarise, show that this phenomenon is not a particularly rare one. There is no doubt that it has entered the public consciousness and it is likely to have the perverse impact of increasing the likelihood of guilty men going free."

17. What must be borne in mind in determining the appropriate level of sentence in this as in all types of case is the degree of culpability. It was apparent from the basis of plea, from the pre-sentence report, from Dr Bray's psychiatric report and, as we now have the benefit, of Mr Hassan's report prepared whilst the appellant was in prison, that at the time of the commission of this offence, albeit not thereafter, the appellant's mind may not fully have accompanied her acts because of the dissociative state from which she was suffering.
18. In those circumstances, it may be said that the sentencing judge took a starting point which was too high. We think that giving full credit for the appellant's personal mitigation, including her mental health difficulties, as well as the letters to which we have referred, the correct sentence following a trial would have been one of 18 months' imprisonment. In those circumstances, we propose to allow this appeal by quashing the sentence of 18 months' imprisonment which, as we have already observed, was imposed following an early plea of guilty. We will therefore substitute for that

sentence one of 12 months' imprisonment. To that limited extent, therefore, this appeal is allowed.